

F5F9RAMS

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 ROSALY RAMIREZ, ET AL.,

4 Plaintiffs,

5 v.

13 CV 2367 (JGK)

6 RIVERBAY CORP.,

7 Defendant.

8 -----x
9 New York, N.Y.
May 15, 2015
2:44 p.m.

10 Before:

11 HON. JOHN G. KOELTL

12 District Judge

13 APPEARANCES

14 MCLAUGHLIN & STERN

15 Attorneys for Plaintiffs

16 BY: LEE S. SHALOV

17 BRETT R. GALLAWAY

18 -and-

19 LAW OFFICES OF LOUIS GINSBERG

20 Attorneys for Plaintiff

21 BY: LOUIS GINSBERG

22 CHRISTOPHER A. SMITH

23 Attorney for Defendant

24 -and-

25 TRIVELLA & FORTE

Attorneys for Defendant

BY: JONATHAN M. BARDAVID

SCOTT P. TRIVELLA

F5F9RAMS

(In open court; case called)

THE COURT: Good afternoon.

This is an application for final approval of the settlement and the request for attorneys' fees. I've read the papers. I'll listen to the parties.

MR. SHALOV: Good afternoon Lee Shalov, McLaughlin and Stern for the plaintiffs.

We are here before the court to present for final approval the settlement of a class action on behalf of Riverbay hourly employees. We believe we achieved a substantial and outstanding result for the class, your Honor, consisting of six-and-a-quarter million dollars in cash. This fund will provide significant benefits to Riverbay's hourly employees and thousands and thousands of dollars to hundreds of individuals who work at Co-op City.

The Court is familiar with the claims and the facts, and we've submitted a very comprehensive declaration and several briefs. I'll just be very short in addressing with you, your Honor, our application for approval of the settlement and our request for attorneys' fees and expenses.

The first consideration in addressing the settlement, your Honor, is whether the settlement is procedurally fair, and here we believe it certainly is. This was a very intensively negotiated settlement over the course of approximately two months. The negotiations were arm's length. They were

F5F9RAMS

1 adversarial. They were all undertaken in good faith. But they
2 were very difficult and intense. And the parties started at
3 widely different ends of the spectrum in terms of the numbers.
4 In addition, the negotiations were overseen by a very
5 experienced mediator, Martin Scheinman, during two separate
6 sessions. And it was only after intensive negotiations -- not
7 only during these sessions but on the phone, by e-mails that I
8 was personally involved in -- that we were able to reach this
9 resolution on behalf of members of the class. So from a
10 procedural perspective, your Honor, we believe that the
11 settlement is fair and merits approval.

12 From a substantive point of view we also believe that
13 all the considerations that courts look at warrant court
14 approval. This was, as the court recognized, a complex
15 lawsuit. This is not a run-of-the-mill FLSA case on behalf of
16 a couple of employees. There were complicated issues about the
17 arbitrability of the claims asserted, the legal impact of
18 setoffs, damage methodologies, the certifiability of the
19 claims. So there were many complicated factual and legal
20 issues that the parties confronted throughout the course of the
21 litigation.

22 Another consideration here, your Honor, is the fact
23 that after sending out 2,000 plus notices to members of the
24 class we did not receive a single objection to the settlement.

25 The Court also, I'm sure, knows that there were

F5F9RAMS

1 substantial discovery undertaken by class counsel in this case
2 over a period of approximately two years. Thousands of
3 documents reviewed, your Honor. E-mails, internal memos,
4 collective bargaining agreements. We literally looked at
5 hundreds, if not thousands, of pages of payroll records. We
6 consulted with experts on multiple occasions going over damage
7 methodologies and their analyses as to the scope of damages.
8 We were in all respects, your Honor, fully informed about the
9 strengths and weaknesses of our claims at the time we entered
10 into these negotiations.

11 They were also substantial risks here, your Honor,
12 that we confronted. While the Court had certified three
13 separate subclasses, we certainly faced a risk of
14 decertification. As you know, defendants had moved for
15 decertification and also appealed before the Second Circuit for
16 review of the decision pursuant to Federal Rule 23(e). There
17 were, in addition to these appeals, substantial risks regarding
18 the defendants' set off defense and certainly if the defendants
19 were proven to be correct, that they, in fact, overpaid many
20 employees, that could have substantially minimized, if not
21 eliminated, the entirety of the compensation received by
22 members of the class.

23 The ability to withstand a further judgment is also a
24 consideration that warrants approval of the settlement. This
25 is not a an ordinary situation involving a public company. We

F5F9RAMS

1 have a cooperative here that is in somewhat financial distress.
2 They did not have a lot of cash on hand. It's a financially
3 distressed entity. There was a substantial mortgage that the
4 co-op had executed with Wells Fargo. So, certainly had we
5 litigated this case to trial and achieved a substantial verdict
6 in our favor there was a risk and a real risk, as defendants
7 told us throughout our negotiations, that the company might
8 have to declare bankruptcy. So we had to seriously consider
9 that risk throughout the course of negotiations.

10 In terms of the relationship --

11 THE COURT: The first two payments under the
12 settlement have already been made?

13 MR. SHALOV: They have, your Honor.

14 In terms of the relationship to the best possible
15 recovery, again, we think that this warrants court approval.
16 It is a settlement that achieves a very significant percentage
17 of the damages on a best case scenario basis. Our experts
18 concluded that the total damages on a best case scenario were
19 about \$19 million. But that included liquidated damages. It
20 included attorneys' fees. It included prejudgment interest.
21 And there were certainly substantial doubts that we could
22 achieve that number had we litigated the case to trial. So,
23 our recovery at \$6.25 million represents almost 35 percent of
24 the total best case scenario damages.

25 Just looking at it from the total compensatory damages

F5F9RAMS

1 perspective, the settlement fund of six-and-a-quarter million
2 represents about 66 percent of the total settlement fund.

3 So in the context where settlements are frequently
4 approved where the recovery is two, three percent of the total
5 damages that could have been proven at trial, this recovery
6 here is truly significant in terms of the relationship to the
7 best possible recovery.

8 So, given that all these considerations, your Honor,
9 we believe are in favor of approval of the settlement we
10 respectfully request that the court finally approve the
11 settlement.

12 THE COURT: There are no objections?

13 MR. SHALOV: None.

14 THE COURT: Correct?

15 MR. SHALOV: Correct.

16 THE COURT: There is no objector who has come here,
17 right?

18 MR. SHALOV: No, your Honor.

19 THE COURT: There were 18 opt-outs and now one person
20 reversed himself so there are 17 opt-outs?

21 MR. SHALOV: That's correct.

22 THE COURT: It's really picky but the first page of
23 your memo says, "Plaintiffs and class counsel are pleased to
24 present to the court for final approval a \$6.25 settlement."
25 Just left out "million."

F5F9RAMS

1 MR. SHALOV: Looks like out we left out an important
2 number. We apologize for that mistake.

3 THE COURT: 6.25 million.

4 MR. SHALOV: It is, your Honor.

5 If the Court has no further questions, I can turn to
6 the request for attorneys' fees and reimbursement of expenses.

7 THE COURT: Right.

8 MR. SHALOV: Your Honor, the plaintiffs also request
9 attorneys' fees representing one-third of the settlement fund
10 and reimbursement of expenses totaling approximately \$141,000.
11 The specific numbers are contained in our settlement papers.

12 THE COURT: Right.

13 MR. SHALOV: Your Honor, we also believe this fee
14 request is fair and reasonable and merits court approval. The
15 Court, of course, is aware that this case was taken on a
16 contingency basis. We certainly had no assurance that we were
17 ever going to get paid. And this was a very complicated,
18 difficult case. And so in a context where we had no assurance
19 of any recovery and were litigating a very contested, highly
20 risky case, the contingent nature of the relationship between
21 plaintiffs and counsel is a factor for the Court to consider.

22 As far as the work is concerned, your Honor, we have
23 talked about that at length in our declaration. It was truly a
24 substantial undertaking on the part of class counsel over the
25 course of approximately two years, your Honor. There were

F5F9RAMS

1 about 22 depositions, 14 that we defended and 8 that we took,
2 and substantial time and effort to prepare witnesses and to
3 prepare for these depositions.

4 The documents we reviewed were in the thousands. As I
5 said, your Honor, internal memos and collective bargaining
6 agreements and e-mails and payroll records. I know
7 Mr. Gallaway, in particular, and paralegals in my firm spent
8 countless hours looking at payroll records, analyzing records
9 and working with members of the class to go over those records.
10 We engaged in over a hundred interviews of employees during the
11 course of the litigation, your Honor, meeting with them, going
12 to Co-op City, talking with them on the phone.

13 There were a substantial number of document requests
14 in the multiple -- in multiple sets, document demands,
15 interrogatory responses. This was an unusual situation where
16 we had to literally get responses to interrogatories from about
17 170 people. And we had paralegals and lawyers calling
18 employees on the phone, which was certainly no easy undertaking
19 in itself because we didn't have contact information for a lot
20 of them. And we were able to track down and get responses from
21 about 116 employees that we submitted to the Court on a rolling
22 basis.

23 The motion practice in this case, as the Court knows,
24 was extensive. There were motions for collective
25 certification, class certification, motions to compel

F5F9RAMS

1 discovery, a motion for summary judgment, a motion for
2 decertification, 1292 certification, sanctions, appeals. The
3 work undertaken, your Honor, was truly substantial.

4 We conducted significant amounts of research. The
5 drafting took place over weekends and nights, sometimes on
6 holidays, often on an expedited basis. There was a period in
7 August and September of 2014 where we were faced with four
8 separate briefs that we had to draft and respond to, so that
9 the motion practice and the work that we undertook in
10 connection with that process was truly substantial and involved
11 many, many hours of time and attention.

12 We consulted extensively with experts, your Honor. We
13 spent many, many hours on the phone looking at damage analyses,
14 looking over payroll records, talking on the phone with our
15 experts, reviewing analyses with the experts. They truly did
16 an outstanding job here, your Honor, and that was certainly a
17 major aspect of the work that we performed.

18 We attended a number of court hearings both before
19 your Honor and Judge Gorenstein, who was truly helpful and very
20 helpful throughout the course of this case. The hearings took
21 place over the phone and in person.

22 The settlement process was extremely arduous and long.
23 We drafted comprehensive mediation statements. The
24 negotiations took place over, as I said, about two months.
25 Several mediation sessions, countless e-mails, countless

F5F9RAMS

1 telephone calls. Took also a lot of time to work through the
2 complexities of the settlement stipulation and the financial
3 aspects of the settlement stipulation, the plan of allocation.
4 So that was certainly a major aspect of the work that we
5 performed.

6 So at the end of the day, your Honor, our firms
7 collectively spent about 3,250 hours over the course of two
8 plus years and we continue to work on the case, your Honor.
9 We, in fact, even met with a class member outside today. We
10 are on the phone with employees who call us up. We work with
11 the experts in working through damage calculations. We're on
12 the phone constantly with the settlement administrator, RG/2,
13 which has also done an outstanding job in this case. So there
14 is, in fact, work that will be done and is being done as we
15 speak that's not included in our lodestar figure.

16 The complexity of the case we've gone over.

17 THE COURT: Could I just ask you a couple of
18 questions?

19 MR. SHALOV: Sure, your Honor.

20 THE COURT: One is with respect to your hourly rate.

21 MR. SHALOV: Yes, your Honor.

22 THE COURT: You indicate in the papers that your
23 hourly rate increased fairly recently.

24 MR. SHALOV: Yes, your Honor.

25 THE COURT: And the rate that you're putting in is

F5F9RAMS

1 your current rate.

2 MR. SHALOV: That's correct, your Honor.

3 THE COURT: Even for the hours that you put in prior
4 to the time that your rate went up?

5 MR. SHALOV: Yes, your Honor.

6 We've cited cases for you in the brief that stand for
7 the proposition that in the circumstances -- a circumstance
8 like this where the case proceeds over a period of years, that
9 attorneys are entitled to utilize their current rates and not
10 their historical rates. I can cite those for the Court if it
11 wishes. It appears in a footnote in our fee application.

12 THE COURT: The other question is -- you plainly have
13 set out in detail the work that you did which was extensive and
14 the total hours that each of the lawyers spent. You also
15 recite that you keep hourly records for all of your work but
16 you didn't put in the hourly records as an attachment to the
17 affidavit. I have no question that you put in the hours. My
18 only question is whether under the current law you have to put
19 in the printouts of your hourly rates so that I can make the
20 spot checks to assure that the work was efficiently done.

21 MR. SHALOV: Two answers to that, your Honor. I did
22 indicate in our declaration that we were more than happy to
23 submit our time records to the Court if it wishes. I have the
24 time records with me and certainly if the Court wants them I'm
25 happy to produce them.

F5F9RAMS

1 The cases on this are mixed, your Honor. I have seen
2 cases where courts have asked for the hourly time records and I
3 have seen cases where courts don't ask for the hourly time
4 records, they are generally familiar with the work that was
5 done, they have a summary of the hours spent by the lawyers,
6 and that's sufficient, particularly when the lodestar multiple
7 is relatively modest as it is here.

8 So I think the authorities go both ways, your Honor.
9 Certainly in a fee shifting case, which this is not, you need
10 to submit the time records. But since this wasn't a fee
11 shifting case, we did not submit them, but I'm certainly happy
12 to.

13 THE COURT: If you have them with you, you should pass
14 them up.

15 MR. SHALOV: May I approach the bench, your Honor.

16 THE COURT: Sure.

17 They are actually less extensive than I would have
18 thought.

19 MR. SHALOV: They are pretty detailed if you go
20 through them, your Honor.

21 THE COURT: Well the type is very small. Okay.

22 MR. SHALOV: Shall I proceed, your Honor?

23 THE COURT: Yes.

24 MR. SHALOV: The complexity of the case is also
25 another consideration. I've gone over that, your Honor. I

F5F9RAMS

1 don't think I need to repeat myself.

2 The result achieved is also a factor for the courts to
3 consider and I think, as I've said before, that this is a truly
4 outstanding result for members of the class. This is a
5 significant recovery. People are getting back thousands and
6 thousands of dollars, some in excess of ten thousand, if not
7 hundreds in excess of ten thousand. So I think it is a truly
8 outstanding result that we accomplished really through
9 significant toil and effort over the period of two years.

10 In addition, your Honor, there are no objections.
11 We've sent out over 2,000 notices and not a single one objected
12 to our fee request. We cited a number of cases in our brief,
13 your Honor, supporting the proposition that awards of one-third
14 are warranted and appropriate in these types of cases. So,
15 there is clearly a sizeable precedent for the proposition that
16 awarding a third is appropriate, particularly in a circumstance
17 where all the other factors for courts to consider militate in
18 favor of the fee request.

19 The Court, of course, is required to do a lodestar
20 crosscheck. And we've submitted our hours, your Honor. We've
21 also provided the court, you now have them before you, our time
22 records. The multiple comes out to a very modest 1.41.

23 There is always, as the Court knows, some duplication
24 of efforts given the complexity of a large class action like
25 this where we had several lawyers working on the case. But

F5F9RAMS

1 even if you reduce by some small percentage the lodestar figure
2 to account for some duplication of effort, the multiple still
3 is eminently fair and reasonable, your Honor, compared to other
4 cases where courts have awarded multiples in the range of two,
5 three, four, and sometimes higher. So from a crosscheck
6 perspective, your Honor, we think that the lodestar figure and
7 the multiple very much supports the fee application, your
8 Honor.

9 So in conclusion, your Honor, we believe that all
10 these factors warrant approval of the fee application in the
11 amount that we requested.

12 THE COURT: Is there any reason that I should not
13 include the detailed time records in the record?

14 MR. SHALOV: None from my end, your Honor.

15 MR. GINSBERG: No, your Honor.

16 THE COURT: I just raise that because sometimes there
17 are issues of attorney-client privilege. Okay.

18 MR. SHALOV: If the Court has no other questions on
19 the fee request, I'll turn to the expenses.

20 THE COURT: Thank you.

21 MR. SHALOV: Your Honor, we are requesting
22 reimbursement of expenses in amount of \$141,032.06. We've
23 itemized for the Court the breakdown of these expenses and
24 mostly half of them result or relate to the expenses incurred
25 by our expert EmployStats. They have worked many, many hours,

F5F9RAMS

1 your Honor, with us and independently creating very
2 sophisticated computer algorithms, performing damage analyses,
3 working with us on the telephone for countless hours, helping
4 us with damage methodologies and the calculations for the
5 settlement and the figures to include in the notice.

6 We had substantial deposition costs, your Honor.
7 There were, as I said, 22 depositions and a number of hearings
8 with court reporter costs.

9 We had appellate costs that we incurred in connection
10 with briefing on the 23(f) or (e) -- I'm forgetting the
11 letter -- application by defendants to the Second Circuit.

12 We copied thousands and thousands and thousands of
13 pages in exhibits, in documents produced by the defendants, and
14 for other copying purposes throughout the course of the
15 litigation, your Honor.

16 There were mediation costs that we incurred in paying
17 Mr. Scheinman of about \$10,000. The rest of the expenses are
18 associated with travel and other relatively smaller costs.
19 These expenses came out-of-pocket, your Honor, with no
20 assurance that we would, obviously, recover any of them. And
21 obviously that's another factor for the court to consider in
22 considering the fee request. But we believe these were
23 reasonably and necessarily incurred, and we respectfully ask
24 what the Court approve their reimbursement.

25 Finally, the service awards, your Honor. We have

F5F9RAMS

1 asked for awards of \$5,000 each to the five named plaintiffs.
2 And this number, and I have seen many numbers over the course
3 of years, and they go up as high as \$50,000 to \$75,000. We
4 tried to be very modest and reasonable here. We just didn't
5 ask the Court to compensate people for signing their name to a
6 piece of paper. These five people did a lot of work. They
7 worked with us on the telephone constantly. They reviewed
8 pleadings. They were in constant contact with us. They
9 produced documents to us. They appeared for depositions. They
10 consulted with us in preparing for the depositions. They
11 approved the settlement.

12 And so these people truly stepped forward and played a
13 significant role throughout the process, and I'd like to
14 express my approval on the record for their help and
15 consideration. And three of these people, in fact, are still
16 current employees of Riverbay and certainly bore not a small
17 risk in stepping forward to bring a lawsuit against their
18 employer to try to recover money not only on their own behalf
19 but on behalf of their co-employees and it's truly commendable.

20 I have nothing further, your Honor. Unless the Court
21 has any further questions, I am completed with my presentation.

22 THE COURT: No. Thank you.

23 Mr. Ginsberg, do you want to say something?

24 MR. GINSBERG: Sorry, your Honor.

25 I think Mr. Shalov pretty much presented it. Like his

F5F9RAMS

1 firm, my firm did substantial work, appeared before you many
2 times. I think you're familiar with the work, including
3 summary judgment, opposition to summary judgment, and
4 everything related to that. So I don't really have anything
5 specific to add, your Honor.

6 THE COURT: Thank you.

7 Defendants.

8 MR. BARDAVID: Briefly, your Honor, we think that,
9 from the perspective of the settlement, we still come to this
10 from a position of obviously no admission of liability. We
11 think this was difficult decision, one that your Honor knows,
12 my client, Mitchell-Lama housing complex, we're talking about
13 low and middle income individuals who ultimately bore the cost
14 of the settlement in terms of a significant increase in their
15 own costs but ultimately we faced the business decision and we
16 made it.

17 With regards to the fee application and the rest, we
18 simply take no position. We believe the Court can weigh the
19 factors laid out by Mr. Shalov and determine what's fair and
20 equitable for the class members. But as far as the overall
21 settlement, we obviously support the settlement that was
22 reached at arm's length after a lot of work by all parties.
23 Thank you.

24 THE COURT: Thank you.

25 (Pause)

F5F9RAMS

1 I've reviewed the papers and listened to counsel and
2 it's plain that the settlement is fair, reasonable and
3 adequate. The proposed order goes through the necessary
4 factors. The settlement is procedurally fair. It was
5 negotiated at arm's length by experienced counsel. There is no
6 reason to believe that there was any collusion. It was arrived
7 at with the assistance of a mediator. It's apparent that it
8 was vigorously negotiated.

9 Substantively, it's fair, reasonable and adequate.
10 This was very complex case that involved considerable
11 difficulties in the stages of the case that preceded the
12 settlement. If the case weren't settled there were
13 considerable risks; risks maintaining the class, risks in being
14 able to establish liability and damages.

15 The amount of recovery is well within the range of
16 reasonableness. Whether it's viewed as somewhat in excess of
17 66 percent of the maximum compensatory damages or somewhat in
18 excess of 32 percent of the maximum damages, the settlement is
19 well within the range of reasonableness.

20 The fact that there were no objections to the
21 settlement and only 17 opt-outs is strong evidence of the
22 reasonableness of the settlement.

23 The notice to the class was consistent with Rule 23
24 and the best notice practicable under the circumstances and
25 satisfies due process.

F5F9RAMS

1 I scrutinize a request for attorneys' fees with great
2 care because I appreciate that the attorneys' fees should
3 themselves be reasonable. And if the attorneys' fees were
4 reduced, the award may go to the members of the class.

5 This is a case in which there have been no objections
6 to the attorneys' fees. But the Court has a responsibility to
7 analyze the attorneys' fees independently. And the attorneys'
8 fees that have been requested are reasonable. One-third of the
9 settlement amount is well within the range of reasonableness.
10 And there is no reason to alter that amount here. There were
11 considerable difficulties in the case. The case was pursued on
12 a contingent fee basis. The case took a reasonable amount of
13 time to litigate and the plaintiffs' lawyers bore the risk of
14 possibly not making a recovery. Judged against the lodestar as
15 a comparator to assure reasonableness, the fee is reasonable.

16 The hourly rates were reasonable. The amount of time
17 spent on the case was certainly reasonable. There were a great
18 deal of -- there was a great deal of work that went into
19 arriving at the point where the case was settled. And there is
20 some additional work that will be necessary for which there
21 will be no compensation other than the amount of the attorneys'
22 fees that have been requested.

23 The number of hours is reasonable given the amount of
24 work. And a review of the actual time records indicates that
25 there is no excessive billing in the sense of, for example, an

F5F9RAMS

1 unusually large number of hours that are billed in the course
2 of a day for work so that the lodestar is a reasonable
3 lodestar. The multiplier, as a crosscheck, is 1.41, which is
4 well within the range of reasonableness. So that there is no
5 reason based on the lodestar check to vary the amount of
6 attorneys' fees that are being sought.

7 The amount of costs is reasonable, \$141,032.26.

8 The amount of the service payments, \$5,000 for the
9 named plaintiffs, is also reasonable.

10 I have signed the order approving the settlement and I
11 will see that it is filed today.

12 MR. SHALOV: Thank you, your Honor.

13 THE COURT: Anything further?

14 MR. SHALOV: Nothing here, your Honor.

15 MR. SMITH: Nothing here.

16 MR. GINSBERG: Thank you, Judge.

17 THE COURT: Good afternoon. Nice to see you.

18 (Adjourned)
19
20
21
22
23
24
25